

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CAIN RESTAURANT CO.,
a Michigan corporation,

Plaintiff/Counter-Defendant,

Case No.04-74239

HONORABLE DENISE PAGE HOOD

v.

CARROLS CORPORATION,
a foreign corporation,

Defendant/Counter-Plaintiff.

ORDER

These matters are before the Court on Plaintiff Cain Restaurant Co.'s Motion to Alter or Amend March 27, 2006, Order Granting Summary Judgment, filed on April 4, 2006 and Carrols Corporation's Motion for Leave to File Response to Plaintiff's Rule 59 Motion, filed on May 25, 2006.

A motion filed after a judgment has been entered is correctly considered as either a motion for new trial or motion to alter or amend judgment under Fed. R. Civ. P. 59. *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 268 (6th Cir. 1998). Rule 59(e) allows a party to file a Motion to Alter or Amend Judgment within a ten-day time period of the entry of the Judgment.

The Local Rules of the Eastern District of Michigan provide that any motion for reconsideration shall be served not later than ten days after entry of such order. E.D. Mich. LR 7.1(g)(1). No response to the motion and no oral argument thereon shall be allowed unless the Court, after filing of the motion, otherwise directs. E.D. Mich. LR 7.1(g)(2). Local Rule 7.1(g) further states:

- (3) **Grounds.** Generally, and without restricting the discretion of the Court, motions for rehearing or reconsideration which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

E.D. Mich. LR 7.1(g)(3).

In its Motion, Plaintiff/Counter-Defendant Cain claims that Defendant/Counter-Plaintiff Carrols expects to receive title to both the “Premises” and the “Building” and there remains a potential dispute as to the property interest to be conveyed by Cain to Carrols as a result of Carrols’ exercise of the purchase option. The Court has already held “that the term “Premises” means the premises located at 1023 N. West Avenue, Jackson, MI 49202 and being more particularly described on Schedule A.” (March 27, 2006 Opinion and Order, p. 7) Plaintiff/Counter-Defendant Cain has raised no issues not previously ruled upon by this Court, either expressly or by reasonable implication. Nor has Plaintiff/Counter-Defendant shown a palpable defect that if corrected would result in a different disposition of the case.

Accordingly,

IT IS ORDERED that Plaintiff Cain Restaurant Co.’s Motion to Alter or Amend March 27, 2006, Order Granting Summary Judgment [**Docket No. 70, filed on April 4, 2006**] is DENIED.

IT IS FURTHER ORDERED that Carrols Corporation’s Motion for Leave to File Response to Plaintiff’s Rule 59 Motion [**Docket No. 73, filed on May 25, 2006**] is DENIED pursuant to E.D. Mich. LR 7.1(g)(2).

/s/ Denise Page Hood
DENISE PAGE HOOD
United States District Judge

DATED: March 26, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 26, 2007, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager